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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON PAUL ONIS KING KIVI,

Defendant.

Case No. 3:05-cr-0106-JWS

**DEFENDANT'S SENTENCING
MEMORANDUM**

Defendant, Jason Paul Onis King Kivi, by and through counsel M. J. Haden, Staff Attorney, hereby submits the following sentencing memorandum to aid the court at the imposition of sentence hearing scheduled for Friday, July 7, 2006.

I. Introduction

Mr. Kivi has pleaded guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). During the litigation of Mr. Kivi's case, he filed a motion to suppress alleging that the search of his residence was in violation of his Fourth Amendments rights. His motion was denied by this court. The government then offered Mr. Kivi a choice between entering a conditional plea with no sentencing recommendation

from the government or entering into a plea agreement in which the government would recommend the low end of the range, in particular a sentencing of 84 months based on the parties' calculation at the time. As Mr. Kivi did not want to proceed to trial, Mr. Kivi closely weighed these two options posed by the government. After much deliberation, Mr. Kivi decided to forego his conditional plea and plead guilty pursuant to a plea agreement. In the plea agreement, the parties calculated Mr. Kivi's guideline range to be 84 to 105 months. As promised, the government recommended a sentence of 84 months, "consistent with the lower end of the applicable guideline range." However, the presentence report writer calculated Mr. Kivi's criminal history one category lower than the parties had anticipated resulting in a sentencing range of 70 to 87 months. The government is recommending a sentence of 84 months as stated in the plea agreement. Mr. Kivi requests a sentence of 70 months. Mr. Kivi contends that it was his expectation, in forgoing his conditional plea, to receive a recommendation at the low end of the applicable guideline range. Although at the time of the plea agreement, the parties anticipated that sentence to be 84 months, that calculation was inaccurate. The probation officer has correctly calculated the low end of the range to be 70 months. Mr. Kivi requests that he be sentenced to a 70 month period of incarceration. Mr. Kivi believes that a sentence of 70 months is sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. § 3553 and will provide just punishment in this case.

II. Mr. Kivi's Personal History

Mr. Kivi is a 27 year old Native Alaskan from south east Alaska. He was raised by his adoptive mother and her husband in Nikiski. See Attachment A, picture of

Jason Kivi and his mother, Lucille Wilson. Mr. Kivi has one child, an eight year old son named Onis. See, Attachment B, pictures of Jason Kivi and son Onis. Mr. Kivi's son was the result of a relationship that he had with an underage female that was the subject of his 1997 conviction for Sexual Abuse of a Minor. At the time of his arrest, Mr. Kivi had regained custody of his son and according to his immediate family he was providing a loving, stable environment for the boy.

As is stated in the PSR, Mr. Kivi experienced some difficulties growing up. In observing the behavior of Onis who has been officially diagnosed with Fetal Alcohol Syndrome (FAS) and Attention-Deficit Hyperactivity Disorder (ADHD), his mother now wonders if Jason did not suffer from the same disabilities. Yet, at the time of his arrest, Mr. Kivi was successfully employed. As the letters from his employer and co-workers state, he "far out performed" other employees and was "always early to work and always the last to leave" – "a hard worker [that] takes pride in his work." At the time of his arrest, Mr. Kivi was drug and alcohol free and with the support of his family on his way to making a new life for himself and his son. See Attachment C, letters from employer, co-workers, family and friends.

III. Sentencing Recommendation

Mr. Kivi respectfully requests that the court sentence him at the low end of the applicable guideline range which would be 70 months. The low end is appropriate in this case as there are no aggravating circumstances not already taken into consideration by the guidelines. The re-introduction of Mr. Kivi's son into his life has provided a sea change for him. His son has given him a solidified reason to become a productive and

contributing member of his community. For the first time in his life, he has demonstrated that he can be a reliable and valued employee. Mr. Kivi has the support of a loving family. He has the potential to become the dad for his son that he never had.

DATED this 3rd day of July, 2006.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF ALASKA

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Certification:

I certify that on July 3, 2006, a copy of the foregoing document, with attachments, was served electronically on:

Bryan Schroder, Esq.

and hand delivered on:

United States Probation/Pretrial Services
222 West 7th Avenue, No. 48, Room 168
Anchorage, AK 99523

/s/ M. J. Haden